

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

OHIO SECURITY INSURANCE  
COMPANY, a New Hampshire company,

Plaintiff,

vs.

BLACK & DECKER INC. D/B/A  
PORTER CABLE CORPORATION, a  
Maryland corporation,

Defendant.

U.S.D.C. Case No. \_\_\_\_\_

(State Court No. 4FA-21-0158CI)

**NOTICE OF REMOVAL**

PLEASE TAKE NOTICE that Defendant BLACK & DECKER, INC. d/b/a PORTER-CABLE CORPORATION, a Maryland corporation (“Black & Decker”), hereby removes the state court action captioned *Ohio Security Insurance Company, a New Hampshire Company, v. Black & Decker INC. D/B/A Porter Cable Corporation, a Maryland Corporation*, Case No. 4FA-21-0158CI pending in the Superior Court for the State of Alaska, Fourth Judicial District at Fairbanks (“Action”), to this Court pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. The grounds for removal are as follows:

**THE REMOVED CASE**

1. This is a strict products liability action in which plaintiff, Ohio Security Insurance Company (“Plaintiff”), alleges that defendant, Black & Decker, manufactured and was a commercial seller of an air compressor that was not reasonably safe in design and

1 construction, which air compressor failed to operate properly, and that failure ultimately  
2 caused a fire and substantial property damage to Plaintiff.

3 2. Plaintiff filed their Complaint on May 4, 2021, in the Superior Court for the  
4 State of Alaska, Fourth Judicial District at Fairbanks. Black & Decker was served with a copy  
5 of the Complaint on June 30, 2021.

6 3. The Action could have been originally filed in this court pursuant to 28 U.S.C.  
7 §§ 1332 and 1367, in that there is complete diversity between the parties, and the amount in  
8 controversy is in excess of \$75,000, exclusive of interest and costs.  
9

10 **REMOVAL IS APPROPRIATE AND TIMELY**

11 4. This Notice of Removal is timely filed within 30 days after Black & Decker  
12 received the Complaint. 28 U.S.C. § 1446(b); *Eyak Native Village v. Exxon Corp.*, 25 F.3d 773,  
13 779 (9<sup>th</sup> Cir. 1994) (“[R]emoval was within the 30-day period required by section 1446(b) and  
14 was timely”).

15 5. Venue properly lies in the United States District Court for the District of  
16 Alaska pursuant to 28 U.S.C. §§ 81A and 1441(a) because Alaska constitutes one judicial  
17 district embracing the place where the Action is pending.  
18

19 6. This is a civil action that falls under the court’s original jurisdiction under 28  
20 U.S.C. §1332 and is one that may be removed to this court based on diversity of citizenship  
21 under 28 U.S.C. §§ 1441 and 1446. Pursuant to 28 U.S.C. § 1441(b), suits that do not arise  
22 under federal law are removable “if none of the parties in interest properly joined and served  
23 as defendants is a citizen of the State in which such action is brought.”  
24  
25

7. Complete diversity of citizenship exists between the parties.

8. A corporation is deemed to be a citizen of the state of its incorporation and the state in which it maintains its principal place of business. 28 U.S.C. §1332(c)(1); *Montrose Chemical Corp. of California v. American Motorists Ins. Co.*, 117 F.3d 1128, 1132 (9<sup>th</sup> Cir. 1997).

9. Plaintiff is a company duly organized under the laws of New Hampshire with its principal place of business in Ohio. (Complaint, ¶ 1.1, Exhibit A).

10. Defendant is incorporated in the state of Maryland and has its principal place of business in Tennessee. Therefore, Defendant is a citizen of Maryland and Tennessee for purposes of determining diversity of citizenship. Defendant was not a citizen of the State of Alaska at the time the Action was filed within the meaning of the Acts of Congress relating to the removal of cases. 28 U.S.C. § 1332(c)(1).

11. Accordingly, there is complete diversity among the parties, and removal of the Action to this court is proper pursuant to 28 U.S.C. § 1332(a)(1).

AMOUNT IN CONTROVERSY

11. Pursuant to 28 U.S.C. § 1332(a), the amount in controversy in a case in which federal jurisdiction is based on diversity of citizenship must exceed \$75,000, exclusive of interest and costs. *Geographic Expeditions, Inc. v. Estate of Lhotka ex rel. Lholka*, 599 F.3d 1102, 1106 (9<sup>th</sup> Cir. 2010) (“A federal court has jurisdiction over the underlying dispute if the suit is between citizens of different states, and the amount in controversy exceeds \$75,000 exclusive of interest and costs”); *Borgen v. United Parcel Services*, 2006 WL 1096628 at \*1 (D.

1 Alaska April 25, 2006) (case properly removed where the complaint demonstrates that at the  
2 time of removal the amount in controversy exceeded \$75,000).

3 12. It is clear from the Complaint that the amount in controversy in the Action is  
4 greater than \$75,000, exclusive of interest and costs. The Complaint seeks an award of  
5 damages in excess of \$100,000 for the damages allegedly incurred by Plaintiff. (Complaint,  
6 ¶¶ 2.2, 3.6, 4.7, Exhibit A). Furthermore, in order to bring a civil suit in the superior court,  
7 the amount in controversy must exceed \$100,000, exclusive of costs, post-filing interest, and  
8 attorney's fees. *See* Rule 45 of the Alaska Rules Governing the Administration of All Courts.  
9 Because the Action was filed in the superior court, and Plaintiffs explicitly allege they seek  
10 to recover sums in excess of the superior court's jurisdictional amount it is clear that the  
11 amount in controversy in the Action exceeds \$75,000, exclusive of interest and costs.  
12

13 13. As such, all of the requirements for federal diversity jurisdiction under 28  
14 U.S.C. § 1332(a) are satisfied and this case is removable in accordance with 28 U.S.C. § 1441.  
15

16 **PAPERS FROM REMOVED ACTION AND OTHER REQUIREMENTS**

17 14. As required by 28 U.S.C. § 1446(a), copies of all process, pleadings and orders  
18 in the Action in Defendant's possession are attached hereto as Exhibit A (Summons and  
19 Notice to Parties of Judicial Assignment and Complaint for Damages) and incorporated  
20 herein by this reference.

21 15. Pursuant to 28 U.S.C. § 1446(d), Black & Decker is filing a written notice of  
22 this removal with the Clerk of the Superior Court for the State of Alaska, Fourth Judicial  
23 District at Fairbanks. Copies of this Notice of Removal and the notice of filing this Notice  
24  
25

Clapp, Peterson, Tiemessen, Thorsness LLC  
411 Fourth Avenue, Suite 300  
Fairbanks, AK 99701-4711  
(907) 479-7776 fax (907) 479-7966  
[jit@cplawak.com](mailto:jit@cplawak.com)

1 of Removal directed to the Clerk of the Superior Court for the State of Alaska, Fourth  
2 Judicial District at Fairbanks are also being served upon Plaintiff as required by 28 U.S.C. §  
3 1446(d).

4 WHEREFORE, Defendant Black & Decker respectfully removes the Action from  
5 the Superior Court for the State of Alaska, Fourth Judicial District at Fairbanks, pursuant to  
6 28 U.S.C. §§ 1332, 1441 and 1446.  
7

8  
9 DATED at Fairbanks, Alaska, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

10  
11 CLAPP, PETERSON, TIEMESSEN &  
12 THORSNESS LLC  
13 Attorneys for Black & Decker U.S.) Inc.

14 By: /s/ John J. Tiemessen  
15 John J. Tiemessen  
16 Alaska Bar No. 9111105  
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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy  
of this document including a total of \_\_\_ pages  
was served via email and believed to be completed  
without error from the email address \_\_\_\_\_  
to the following individuals:

Kyle A. Farnam  
COZEN O'CONNOR  
999 Third Avenue, Suite 1900  
Seattle, WA 98104  
Telephone: 206.340.1000  
E-mail: [kfarnam@cozen.com](mailto:kfarnam@cozen.com)

By: \_\_\_\_\_

Date/Time: \_\_\_\_\_